

APPROVED

**SPECIAL MAGISTRATE HEARING
1st FLOOR COMMISSION CHAMBERS
FORT LAUDERDALE CITY HALL
MARK PURDY PRESIDING
NOVEMBER 6, 2015
9:00 A.M.**

Staff Present:

Mary Allman, Secretary, Special Magistrate
Deanna Bojman, Clerk III
Yvette Cross-Spencer, Clerk III
Sharon Ragoonan, Code Compliance Manager
Lori Grossfeld, Clerk III
Porshia Goldwire, Administrative Assistant
D'Wayne Spence, Assistant City Attorney
Cole Copertino, Assistant City Attorney
Alain Boileau, Assistant City Attorney
Rhonda Hasan, Assistant Attorney
Detective Diana Rose
Dick Eaton, Code Compliance Supervisor
Anthony Fajardo, Zoning Administrator
Ingrid Gottlieb, Senior Code Enforcement Officer
Police Captain Steven Scelfo
Building Official John Travers

Respondents and witnesses

CE15080767; CE15080773; CE15080775: Kim Renee, Florida Department of Children and Families; Kristin Stablein, Director of Child Welfare at Chrysalis House; Krishna Rivera, program coordinator; Tayri Gildelamadrid, care coordinator; Kim Gorsuch, DCF; Cindy Seltzer, Children's Services Council; Jessica Gill, court reporter; Anuska Demille, Chrysalis representative; Emilio Benitez, ChildNet president; Gary Johnson, president of the Southern Christian Leadership Conference; Chrysalis representative; Vickie Hess, Licensing and Adoptions Manager for DCF; Dennis Miles, DCF; Neighbors: Donnalee Minot, Carolyn Sparks; Sandy Gatanio; Rosby Glover; Phyllis Espinal; Timothy Emerson; Gretchen Hano; Attorneys: Jean Costa; Eduardo Lacasa; Stephanie Toothaker; Walter Honaman; Derrick Roberts; Gordon Weekes Jr.; Matthew Scott

NOTE: All individuals who presented information to the Special Magistrate during these proceedings were sworn in.

The meeting was called to order at 9:11 A.M.

The following three cases were heard together:

Case: CE15080767

Continued from 10/15/15

1133 Northwest 7 Avenue

TIITF/HRS-YOUTH SERV BROWARD CHILDREN SHELTER

18-1.

THE OPERATION AT THIS ADDRESS IS CREATING A
NUISANCE, IN THAT THERE HAS BEEN A NEGATIVE IMPACT
ON OTHER PROPERTIES.

47-34.1.A.1.

THIS RD-15 ZONED PROPERTY IS IN VIOLATION OF THE
PERMITTED USES AS INDICATED IN THE ULDR SECTION
47-5.12, AS THE PROPERTY IS CURRENTLY BEING
ILLEGALLY USED AS A LEVEL IV OR LEVEL V SSRF.
SUBJECT TO ULDR SEC. 47-3, VIOLATOR MAY PROVIDE
INFORMATION DEMONSTRATING THAT THE USE AT THIS
LOCATION IS NONCONFORMING. IF COMPLIANCE WITH THIS
SECTION CANNOT BE DEMONSTRATED, THE USE IS
CONSIDERED NONCONFORMING.

Case: CE15080773

Continued from 10/15/15

1135 Northwest 7 Avenue

TIITF/HRS-YOUTH SERV BROWARD CHILDREN SHELTER

18-1.

THE OPERATION AT THIS ADDRESS IS CREATING A
NUISANCE, IN THAT THERE HAS BEEN A NEGATIVE IMPACT
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INFORMATION DEMONSTRATING THAT THE USE AT THIS
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SECTION CANNOT BE DEMONSTRATED, THE USE IS
CONSIDERED NONCONFORMING.

Case: CE15080775

Continued from 10/15/15

1141 Northwest 7 Avenue
TIITF/HRS-YOUTH SERV BROWARD CHILDREN SHELTER

18-1.

THE OPERATION AT THIS ADDRESS IS CREATING A
NUISANCE, IN THAT THERE HAS BEEN A NEGATIVE IMPACT
ON OTHER PROPERTIES.

47-34.1.A.1.

THIS RD-15 ZONED PROPERTY IS IN VIOLATION OF THE
PERMITTED USES AS INDICATED IN THE ULDR SECTION
47-5.12, AS THE PROPERTY IS CURRENTLY BEING
ILLEGALLY USED AS A LEVEL IV OR LEVEL V SSRF.
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SECTION CANNOT BE DEMONSTRATED, THE USE IS
CONSIDERED NONCONFORMING.

Judge Purdy first heard testimony regarding violation: 18-1.

Ms. Hasan explained that the State of Florida was the respondent for this case and only the State of Florida or someone authorized as a representative should refute the violations. Mr. Lacasa stated this issue had been resolved in October when Jean Costa, attorney for the Department of Children and Families (DCF) had addressed it. He said Chrysalis Health, the provider and tenant, should be permitted to respond and pointed out that all notices had been sent from the City to the provider, not the State. The State had indicated to Mr. Lacasa that it wished DCF to respond. Jean Costa, Assistant Regional Counsel, DCF, said the State contracted with ChildNet to provide the services.

Ms. Hasan did not object to Mr. Lacasa acting as designee for the State. She objected to the memo of law sent by Tripp Scott on behalf of ChildNet which indicated the defendants were the facility owner, the lessee and sub-lessee. She had no objection to Mr. Lacasa proceeding on behalf of the State. Ms. Hasan said judge Purdy had not requested a memo of law: he had requested a timeframe and any authority that would be relied upon. Judge Purdy stated he had not read the entire memo and would put it aside.

Mr. Lacasa stated over 1,000 documents he had requested were delivered the previous day and some were missing. Ms. Hasan recalled that at the previous hearing, Mr. Lacasa had indicated there were outstanding public records requests, but those requests were actually made after the meeting and referred to communications between City administration, Code Enforcement and the Police Department. None of this had any bearing on the two cited violations. The other request concerned records of arrests of individuals living in the general area, which had no bearing on the cited violations. Mr.

Lacasa said the purpose of his records request was to disprove that "this property is the cause of all criminal activity in the South Middle River district." He had requested the inter-departmental communication in order to prove that there was a "concerted effort in the City to close this facility down at all costs." The City had increased Code Enforcement efforts and discontinued the Police engagement with the facility that had been providing positive effects.

Mr. Lacasa said there were other group homes in the City that would be affected by the determination of this case but Judge Purdy stated this was beyond the scope of these cases.

Captain Steven Scelfo testified he had numerous dealings with Crescent House over the past two years. He said several residents of Crescent House had been identified as "prolific offenders." He stated the Police Department had a list of juveniles who had committed more than three felonies in the past year and most of those on the list resided at this location. Captain Scelfo had visited Crescent House numerous times to work with staff to help children to assimilate into the community and to address crime issues. He remarked that on his last visit, which was at midnight, none of the children was in bed even though it was a school night, and they had played the song, "F--- the Police" when he was present.

Captain Scelfo was not aware of any directive from the City Administration or City Commission for Police to stop interacting with Crescent House. Captain Scelfo described techniques they had tried to engage the Crescent House residents and to intercept them from leaving the facility at night.

Mr. Lacasa informed Judge Purdy that the facility was licensed for 22 residents but the average was 14 to 15 at one time.

Captain Scelfo stated the crime generated by Crescent House residents was a problem for the neighborhood. He referred to a list indicating that between 1/1/14 and 6/24/15, 139 residents of Crescent House had been arrested. Judge Purdy accepted this into evidence as exhibit 1.

Captain Scelfo explained a chart representing arrestees who had provided Crescent House as a home address and who had been arrested within the boundaries of the South Middle River Civic Association. Judge Purdy accepted this into evidence as exhibit 2.

Captain Scelfo said he had tried a number of different approaches to interact with Crescent House residents depending on the resources available. He felt the regular visits by the Neighborhood Action Team officer had been positive. Captain Scelfo stated they had also conducted a basketball tournament with the help of the South Middle River Civic Association. He agreed that engagement was a positive factor for

the residents of Crescent House but the Police Department could not be responsible for addressing that need.

Captain Scelfo reported that this was a high-crime area. He explained that when there was a burglary in the neighborhood, officers looked at Crescent House first because of the concentration of arrests and offenders across the entire district.

Detective Diana Rose testified that she worked in the juvenile Intelligence-Led Policing (ILP) unit, which identified high rate offenders, kept track of their residences and probationary periods in the hopes that this would reduce re-offending. She stated complaints were made at the local HOA meetings regarding Crescent House residents throwing rocks at other residents, loud music and children blocking the roadway.

Detective Rose had created a spreadsheet describing a list of arrests made of children listing Crescent House as their address, which had been cross referenced with a roster of Crescent House residents. Mr. Lacasa question Detective Rose about arrests of the juveniles when they were residents of Crescent House and when they were not. Detective Rose described the program by which officers checked on juveniles who had curfews and said she felt this program had a positive impact. She agreed that this was a high crime area.

Detective Rose informed Ms. Hasan that most of her unit's ILP juveniles lived at Crescent Hose. She explained that a lot of juveniles started at Crescent House with a clean slate and within a month or so had over three felonies. She described to Mr. Lacasa how she determined this using her rosters of Crescent House residents.

Ms. Hasan reported the City had no more witnesses for the nuisance issue. Mr. Lacasa stated he had many witnesses for the nuisance issue and agreed to bifurcate the determination for the two violations.

Kim Gorsuch, Community Development Administrator for DCF, said she had received some of the Police activity documents they had requested from the City but some were still outstanding. The document she had received indicating 139 arrests attributed to children residing at Crescent House was marked exhibit 3 and her analysis when she had and compared it to the daily roster at Crescent House was marked exhibit 4. Ms. Gorsuch said they had found some discrepancies: of the 139 arrests, 79 of those on the list were Crescent House residents at the time of arrest. Some juveniles may have reported they lived at Crescent House at the time of arrest but they were actually Fort Lauderdale residents. She had excluded 29 pick-up orders because they referred to warrants for earlier arrests. Ms. Gorsuch added that 30 of the arrests had taken place at Crescent House; 24 had occurred within one mile and 25 had occurred more than one mile from Crescent House.

Ms. Gorsuch stated children at Crescent House were declared dependent by a court and placed in foster care. 60-65% had been residents of Fort Lauderdale. She

explained that Florida had privatized these services and that was why ChildNet and Chrysalis were involved. Ms. Gorsuch said it had been determined that it was in children's best interest to be housed in residential areas in a home-like environment. This was also a requirement of State and federal law. She stated the law prohibited staff at the homes from locking the children in or restraining them. Ms. Gorsuch said the staff was awake 24 hours per day and were trained. She believed this supervision reduced the likelihood of the residents committing crimes.

Ms. Gorsuch listed the professionals who were in and out of the facility: child advocates; case managers; probation officers and therapeutic professionals. She said if this facility were closed, the children would be relocated out of the area and this was not consistent with State and federal law.

Ms. Hasan asked Ms. Gorsuch about her statement that the supervision provided at Crescent House prevented crime and pointed out that all children initially entered as dependents (not delinquents) but many became delinquents after residing there. Ms. Gorsuch said they could not know how many of the children would commit even more crimes if they were not in a program that offered this type of supervision.

Vickie Hess, Licensing and Adoptions Manager for DCF, described the licensing requirements for the facility and said Crescent House met all of the criteria. Ms. Hasan explained the City was not contending that Crescent House was not fully in compliance with licensing requirements, but that it constituted a nuisance in the neighborhood. Mr. Lacasa said his witness's testimony was meant to demonstrate that they were not *maintaining* a nuisance there; they were doing everything possible to reduce and eliminate any possible nuisance in the neighborhood.

Ms. Hess continued that there were annual re-licensing visits of the facility to ensure it met health, safety and facility integrity requirements. She reported that historically, Crescent House did very well at the annual inspections.

Judge Purdy took a brief break.

Gary Johnson, president of the Southern Christian Leadership Conference, offered his support for the kids in the group homes.

Cindy Seltzer, president and CEO of the Children's Services Council, Broward County, said the system was doing the best it could to support the children. She was sad that the community and Police had stopped working with the group homes because research showed that Police involvement could be a mitigating factor.

Walter Honaman, Supervising Attorney for the Children's Advocacy Program of Legal Aid, Broward County, said children should never be considered a nuisance.

Judge Purdy stated he was not a policymaker and he had a narrow scope of authority: to determine whether the violations existed.

Emilio Benitez, CEO of ChildNet, informed Judge Purdy that part of decision making process was "whether or not there are viable solutions to this issue that will involve the City, involve the community, involve DCF, the provider and ChildNet." He said they had met several times with the City to discuss solutions and they would continue to work to resolve the issues.

Dennis Miles, Regional Managing Director for DCF's Southeast region, said if the kids were labeled a nuisance, he would have to seek placement for them elsewhere in the state-wide system.

Kristin Stablein, Director of Child Welfare at Crescent House, described the staffing pattern, which comprised a one-to-four ratio of staff to children at all times. This exceeded the state requirement of one-to-six. The staff supervised 24 hours per day, transported children, facilitated meetings at Crescent House and provided food and clothing. Bed checks were conducted regularly when a child was in his room for more than 15 minutes; children were searched when they returned to the facility and FLPD was contacted if drug paraphernalia was found. Doors and gates were locked from the outside and the property was fully fenced. Ms. Stablein described the neighborhood, and said there were five halfway houses on the street, apartment houses that were not well-kept and the area had a problem with adults who committed crimes.

Mr. Lacasa asked what efforts Crescent House had made to engage the community and Ms. Stablein replied they had engaged FLPD early on and former Police Chief Adderley had created the NAT team. She said they had regular activities all week long and they tried to have the kids engage in one community event per month.

Mr. Lacasa asked Ms. Stablein if they had offered any solutions to minimize any impacts to the neighborhood. Ms. Stablein said she had given her phone number out so she could be reached if a child was "doing something that they shouldn't be doing." They tried to attend every 13th Street Alliance meeting and had also attended South Middle River Homeowners Association meetings, which were not always a welcoming environment.

Ms. Hasan asked about the limits of the supervisors' ability to prevent children from leaving the facility at night or playing music and Ms. Stablein replied they did not practice restraint; they sought FLPD assistance for restraint if a situation was dangerous to another child. She acknowledged that a child could leave the facility at will and if a child did not want to go to school, they could not restrain him.

Kris Rivera, program coordinator for Crescent House, said staff ensured the children attended school or had alternative educational or library activities if the children did not want to attend school. The children had afternoon chores and evening activities. Mr.

Rivera stated room searches were conducted every day and damage to the facility was reported. In the event of illegal activity, Mr. Rivera contacted Ms. Stablein and they contacted FLPD. If a child exceeded curfew, they prepared paperwork to report the child missing after four hours.

Ms. Hasan recommended ordering compliance with all 18.1 violations within 30 days or fine of \$100 per day. Compliance could be accomplished by submitting a formal, written plan of mitigation for City administration to consider. Mr. Lacasa stated they were willing to submit a performance improvement plan or new protocols they believed would be in the best interest of the neighborhood and reduce the potential for nuisance and harm to the community.

Judge Purdy then heard testimony regarding violation: 47-34.1.A.1.

Anthony Fajardo, City of Fort Lauderdale Zoning Administrator, provided his job description and stated he was the authority responsible for interpretation of the City's Unified Land Development Regulations (ULDR). Mr. Fajardo had reviewed Building and Zoning records related to Crescent House and Ms. Hasan provided these documents to Judge Purdy. Mr. Fajardo explained that the Crescent House property was zoned RD-15, designated for single-family, duplex and two-family home residential dwellings. This zoning also allowed social service residential facility (SSRF) Level I- no more than four residents and two staff members. Mr. Fajardo cited the code section of the ULDR that described the SSRF level 1 classification: 47-18.32.d.1.

Mr. Fajardo stated the number of residents at Crescent House averaged approximately 20, which exceeded the number permitted by the code: 4. He said Crescent house would be classified as a Level IV facility, which was not permitted in this zoning district. Mr. Fajardo had researched records for the structure and found a 1955 Board of Adjustment approval for a daycare facility and a 1990 building permit to convert the facility from a duplex to a shelter for dependent, non-delinquent children. In 1990, the ULDR limited the facility's use to SSRF Level I. In order to operate a Level IV in this district, Crescent House could apply for rezoning or a use variance.

Mr. Fajardo explained to Mr. Lacasa that there were no zoning designations in the City where an SSRF facility would be permitted by right, but there were several in which they could be approved as a conditional use by the Planning and Zoning Board. He stated an SSRF Level I facility in an RD-15 zone was not just required to have State licensing; there were several triggers requiring the use to be presented to different entities for approval. Mr. Fajardo believed an SSRF level I use would at least require development Review Committee approval.

Mr. Lacasa referred to a building permit (later entered into evidence as exhibit 5) from 1990 for the property when it was zoned R-2 and Mr. Fajardo said it appeared it had been approved for zoning compliance as a shelter for dependent, non-delinquent children.

Mr. Fajardo stated a legally established use could continue as a legal, non-conforming use if the zoning subsequently changed, but the use could not be expanded. Mr. Fajardo explained that the State Comprehensive Plan requirements were implemented in the City's ULDR, and noted that the City's zoning regulation could not be less restrictive than the Comprehensive Plan but they could be more restrictive. The same applied to the Broward County Comprehensive Plan.

John Travers, Fort Lauderdale Building Official, described his job duties and said he was the authority with the jurisdiction over interpreting the Florida Building Code. He had researched Certificates of Occupancy for the three parcels occupied by Crescent House and explained that the COs issued for 1133 and 1141 NW 7 Avenue were for a single-family residence and the CO for 1135 NW 7 Avenue had a permitted change of use in 1990 to become a shelter for dependent, non-delinquent children. In 1990, the owner would have been required to obtain approval for a new CO with that change of use. Mr. Travers testified that the Chief Structural Inspector had visited the property and found a breezeway connecting the three structures and changes to the roof to attach the breezeway. The attachment of the breezeways made these three buildings one structure. Mr. Travers noted that the breezeway material was non-fire resistive, and could act as conduit to allow flames to spread from one structure to another. Mr. Travers said in order to operate as an SSRF facility, they must apply for the three structures to be a single structure. It would also need to meet current code for a group D occupancy, which would entail Zoning review, among others.

Mr. Travers informed Mr. Lacasa that Zoning would review records to determine if zoning was appropriate for that particular use. He stated the breezeway did not have four walls but it protected one from outside elements.

Judge Purdy took a brief break.

Ms. Hasan recommended ordering compliance with all 47-34.1.A.1 violations within 90 days or fine of \$100 per day. Compliance could be accomplished by the facility operating within ULDR guidelines per an SSRF Level I facility. Mr. Lacasa did not feel 90 days would be sufficient to comply because they would need to apply for the appropriate zoning approval and they may eventually appeal the City's decision. He requested two years.

Judge Purdy asked if a facility of this type had even been declared a nuisance and Ms. Hasan stated she was unaware of any such finding since she had worked at the City.

Ms. Hasan recalled the testimony of residents about the impact the facility had on the neighborhood and their quality of life. She reminded Judge Purdy of the testimony from Detective Rose and Captain Scelfo regarding crime related to the juveniles living at the facility and the Police involvement with the facility. Ms. Hasan said Judge Purdy had heard about the direct impact on the neighbors' quality of life and their right to peaceful

enjoyment of their property, which constituted a nuisance. Regarding the land use issue, The Zoning Administrator and Building Official had testified that as of 1990 until the present, only a Level I SSRF facility would have been permitted in this zoning district. The 1990 permit document showed the State's intention to change the occupancy for one of the three folios, but it had never followed through. The other two folios remained zoned for multi-family. Ms. Hasan explained that State Statute 419.001 said that siting of commercial residential homes shall be governed by local zoning ordinances. An SSRF Level I facility could be permitted in this zone and Ms. Hasan said the City would be amendable to such a facility on this site and would grant a 90-day period of time for compliance.

Mr. Lacasa said regarding the nuisance violation, the statistics provided by the City were unreliable. He said the City needed to prove that they were maintaining the facility in a manner that constituted a nuisance and the evidence indicated they met or exceeded standards for staffing levels, supervision, training and the physical plan. He stated the staff was "awake and alert, monitoring the facility" and performed 15-minute bed checks, perimeter checks and reported children absent from the facility after the self-imposed curfew. He said the way the facility was maintained reduced the negative impact on the community compared to if they children were homeless.

Mr. Lacasa questioned "the truth and veracity of the individuals who are arguing against this facility" and cited one community member who claimed to have found drug paraphernalia on the Crescent House property and later admitted he had not personally found it. Another neighbor had denied referring to the area as a "third world country" but admitted he had after being presented with a 2013 article from the Sun Sentinel in which he had been quoted. Mr. Lacasa said neighbors tried to attribute all of the crime in the neighborhood to Crescent House residents and Judge Purdy must "weigh the credibility with the misstatements that they were confronted with and have to recant."

Mr. Lacasa stated Police had stopped dedicating resources to interact with the Crescent House residents and instead dedicated those resources to "profiling these children, surveilling these children, arresting these children, increasing the number of offenses that are being cited now in the numbers."

Mr. Lacasa said this was a continuing, non-conforming use since the 1990 permit. He stated there had been no alterations to the facility or use since 1990. Mr. Lacasa stated the City had been aware of this facility's use for a number of years and the principles of laches and estoppel applied. He referred to case law in Miami wherein the city was estopped from enforcing code enforcement action against a property owner regarding property setback requirements.

Mr. Lacasa said this was an unusual case because the State owned the property and leased it to DCF and subleased to the provider. Pursuant to sovereignty laws, the State had powers allowing it to "operate despite the existing Zoning code." He presented

Judge Purdy with an Attorney General opinion regarding sovereign immunity in Florida and local land use.

In the event Judge Purdy found violations, Mr. Lacasa requested ample time to comply and said they would love to hear from all stakeholders.

Ms. Hasan argued that the Attorney General opinion Mr. Lacasa submitted stated it should be assumed that one governmental entity's property was subject to zoning regulations of the jurisdiction in which it was located "until judicially determined to the contrary." In addition, State Statute 419.001 indicated specifically that the siting of commercial residential homes in areas zoned for single family shall be governed by local zoning ordinances. In terms of laches and estoppel, Ms. Hasan noted that the Miami case was not similar to this case because the Miami case involved a zoning change. The legal non-conforming use argument required that the existing use was legal and in 1990, only an SSRF Level I would have been permitted.

Ms. Hasan asked Judge Purdy to grant the City a few days to provide a written response to the memo filed by ChildNet as adopted by Mr. Lacasa if Judge Purdy agreed to consider it. Judge Purdy granted Ms. Hasan until the following Thursday, November 12. Mr. Lacasa would be allowed two business days to respond to Ms. Hasan's response.

There being no further business, the hearing was adjourned at 1:44 P.M.



Special Magistrate

ATTEST:



Clerk, Special Magistrate

Minutes prepared by: J. Opperlee, Prototype Services